

**DEPARTMENT OF AGRICULTURE
DELAWARE FOREST SERVICE**

Statutory Authority: 3 Delaware Code, Sections 101(3) and 1011 and 29 Delaware Code, Section 8103(8) (3 **Del.C.** §§101(3) and 1011 and 29 **Del.C.** §8103(8))
3 **DE Admin. Code** 402

FINAL

SECRETARY'S ORDER

RE: Approving Final Regulations to Amend 3 DE Admin. Code 402: *State Forests*

Date of Issuance: April 16, 2018

Effective Date of the Amendment: May 11, 2018

402 State Forest Regulations

Under the authority vested in the Secretary of the Delaware Department of Agriculture ("Department", "DDA") pursuant to 3 **Del.C.** §§101(3) and 1011, 29 **Del.C.** §8103(8), and all other relevant statutory authority, the following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced regulatory proceeding.

Background, Procedural History and Findings of Fact

This Order relates to proposed regulation amendments ("Amendments") to 3 **DE Admin. Code** 402: *State Forests*, necessitated as a result of the recent decision of the Delaware Supreme Court in *Bridgeville R&P Club, et al., v. Small*, 176 A.3d 632 (Del. 2017), which expanded the scope of legal possession of firearms within Delaware's State Parks, State Forests, and State Wildlife areas. Delaware State Parks and State Wildlife areas are under the jurisdiction of the Department of Natural Resources and Environmental Control ("DNREC"), while State Forests are under DDA jurisdiction.

In the *Bridgeville* decision, the Court found that portions of existing firearm regulations of both DNREC and DDA violated the Delaware Constitution, in that they were overly broad in their prohibitions. Without valid regulations, firearms would essentially be unregulated (1) within Delaware's State Forest lands, including facilities such as education centers, lodges and offices; (2) within Delaware's State Parks; and (3) on land and waters administered by the Department's Division of Fish and Wildlife, including facilities such as visitor centers, educational facilities, and offices. Thus, on December 26, 2017, pursuant to 29 **Del.C.** §10119, both DNREC and DDA adopted emergency regulation amendments to those portions of each agency's existing regulations affected by the *Bridgeville* decision.

The emergency regulations of DNREC and DDA, as published in the Delaware *Register of Regulations* on January 1, 2018, are intended as interim measures, necessary to avoid the risk of harm to public health, safety, and welfare, pending the formal adoption of regulation amendments pursuant to the Administrative Procedures Act ("APA"), within the 120-day period (renewable for an additional sixty days) allotted to emergency regulations. Once finalized and adopted, the formal regulatory Amendments of both DNREC and DDA will immediately supersede the emergency regulations, pursuant to both the APA and 29 **Del.C.** §10115.

With the aforementioned emergency regulations in effect, both DNREC and DDA then began the formal adoption of the proposed regulations, so as to comply with the *Bridgeville* decision. The Department has the statutory basis and legal authority to act with regard to this proposed regulatory promulgation, pursuant to 3 **Del.C.** §§101(3) and 1011, and 29 **Del.C.** §8003(7).

The commencement of the formal regulatory development process was begun by both DNREC and DDA with the publication of each agency's proposed regulation Amendments in the February 1, 2018 Delaware *Register of Regulations*. Thereafter, public workshops were held jointly by both agencies in each county throughout the State of Delaware in February 2018. The joint public hearing in this matter was held on March 12, 2018, where the aforementioned proposed Amendments were then presented and thoroughly vetted to members of the public. All proper notification and noticing requirements concerning this matter were met by both DNREC and DDA. Proper notice of the hearing was provided as required by law.

The joint hearing held on March 12, 2018 was heavily attended by members of the public, with comment being received by the Department at that time. Pursuant to Delaware law, the record remained open for fifteen (15) additional days subsequent to the date of the hearing for the purpose of allowing additional public comment to be received regarding this proposed promulgation. The hearing record closed for comment in this matter on March 27, 2018, with additional public comment having been received by the Department during the post-hearing phase of this formal promulgation.

After the comment period formally closed, the Department performed a thorough review of the record, including, but certainly not limited to, all of the comments received on the proposed Amendments. The full range of comments contained

in the formal hearing record includes those from members of the public, as well as from other contributors such as the Delaware Association of Second Amendment Lawyers, the National Rifle Association of America, and the Giffords Law Center.

These proposed regulatory Amendments were necessitated by the Delaware Supreme Court's decision in *Bridgeville*, and the resulting need for the existing firearms regulations of both DNREC and DDA to comply with the same. The Court has drawn the lines to delineate how State agencies may regulate firearms, and DNREC and DDA believe that they have respected those limits with these proposed regulatory Amendments.

In *Bridgeville*, the Court specifically described the types of areas within which firearms could be restricted. The proposed regulatory Amendments limit the possession and use of firearms in defined common areas, such as visitor centers, lodges, educational facilities and dormitories, family campgrounds, bathhouses, playgrounds, recreational facilities, and guarded beaches. In adhering to the Court's guidance, only those with concealed-carry permits or law enforcement credentials may carry firearms into these and other "designated areas." The limits on firearms in crowded areas on State lands are consistent with the statutory limits on the use of deadly force. Moreover, the proposed regulatory Amendments specifically state that "[f]irearms may be carried within areas administered by the Division, outside of designated areas, by any person not prohibited by 11 **Del.C.** §1448." This language is found in all three sets of the proposed regulation amendments, specifically, 3 **DE Admin. Code** 402 at Section 8.8.4; 7 **DE Admin. Code** 3900 at Section 8.3.4.10; and 7 **DE Admin. Code** 9201 at Section 21.1.5.

Hearing Officer Vest prepared a Hearing Officer's Report dated April 9, 2018 ("Report"). The Report documents the proper completion of the required regulatory amendment process, establishes the record, and recommends the adoption of the proposed Amendments as attached to the Report as Appendix "A."

Reasons and Conclusions

Based on the record developed by the Department's experts and established by the Hearing Officer's Report, I find that the proposed regulatory amendments to 3 **DE Admin. Code** 402: *State Forests* are well-supported. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that the proposed regulatory Amendments be promulgated as final. I further find that the Department's experts fully developed the record to support adoption of these regulatory Amendments.

In conclusion, the following reasons and conclusions are entered:

1. The Department has the statutory basis and legal authority to act with regard to its proposed amendments to 3 **DE Admin. Code** 402: *State Forests*, pursuant to 3 **Del.C.** §§101(3) and 1011, and 29 **Del.C.** §8103(8);
2. The Department has jurisdiction under its statutory authority, pursuant to 3 **Del.C.** §101(3), to issue an Order adopting its proposed regulatory Amendments as final;
3. The Department provided adequate public notice of the proposed regulatory Amendments, and all proceedings associated with the same, in a manner required by the law and regulations, provided the public with an adequate opportunity to comment on the proposed regulatory Amendments, including at the time of the public hearing held on March 12, 2018, and held the record open through close of business on March 27, 2018, consistent with 29 **Del.C.** §10118(a), in order to consider public comment on the same before making any final decision;
4. Promulgation of the proposed regulatory Amendments will enable the Department to comply with the Delaware Supreme Court's decision in *Bridgeville R&P Club, et al., v. Small*, 176 A.3d 632 (Del. 2017), which expanded the scope of legal possession of firearms within Delaware's State Parks, State Forests, and State wildlife areas;
5. The Department has reviewed these proposed regulatory Amendments in the light of the Regulatory Flexibility Act, consistent with 29 **Del.C.** Ch. 104, and has selected Exemption "B1" concerning same, as these proposed regulatory Amendments are not substantially likely to impose additional costs or burdens upon individuals and/or small businesses;
6. The Department's Hearing Officer's Report, including its established record and the recommended proposed regulatory amendments as set forth in Appendix "A," are hereby adopted to provide additional reasons and findings for this Order;
7. The Department's proposed regulatory Amendments, as published in the February 1, 2018 Delaware *Register of Regulations*, and as set forth in Appendix "A" as noted above, are adequately supported, are not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they are approved as final regulatory Amendments, which shall go into effect ten days after their publication in the next available issue of the Delaware *Register of Regulations*; and
8. The Department shall submit this Order approving as final the proposed Amendments to 3 **DE Admin. Code** 402: *State Forests*, to the Delaware *Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

Michael T. Scuse
Secretary

1.0 Authority

These regulations are promulgated pursuant to the delegation of authority to the Department of Agriculture by the General Assembly found in 3 **Del.C.** Sections 1008 and 1011.

6 DE Reg. 517 (10/01/02)

6 DE Reg. 1201 (03/01/03)

2.0 Purpose

The State Forests of Delaware are open to members of the public for their enjoyment. Most legal forms of non-motorized recreation are permitted. The following regulations were developed to ensure that these publicly owned lands are conserved, protected, and maintained for the benefit of all.

6 DE Reg. 517 (10/01/02)

6 DE Reg. 1201 (03/01/03)

10 DE Reg. 88 (07/01/06)

3.0 Construction

3.1 No regulation herein shall be interpreted or construed in such a manner as to prevent or delay authorized personnel of the Department or other state, county, or municipal agencies from completing official duties or emergency response.

3.2 In special circumstances, events, or emergencies, the Secretary or Forestry Administrator may, when it is deemed to be in the public interest, waive a specific regulation or fee.

3.3 Failure to enforce a specific regulation at a particular instance or instances shall not affect the validity of any other regulation or affect the validity of such regulation at any other time.

6 DE Reg. 517 (10/01/02)

6 DE Reg. 1201 (03/01/03)

10 DE Reg. 88 (07/01/06)

4.0 Definitions

4.1 “**Department**” is the Delaware Department of Agriculture

4.2 “**DFS**” is the Delaware Forest Service

4.3 “**DNREC**” is the Delaware Department of Natural Resources and Environmental Control

4.4 “**Secretary**” is the Secretary of the Delaware Department of Agriculture

4.5 “**State Business Hours**” are 8:00 a.m. to 4:30 p.m. on Monday through Friday, except for state holidays.

6 DE Reg. 517 (10/01/02)

6 DE Reg. 1201 (03/01/03)

10 DE Reg. 88 (07/01/06)

5.0 General Rules and Regulations

5.1 In order to promote the safety and welfare of State Forest visitors and protect and manage property in the State Forests, the Secretary and Forestry Administrator shall have the authority to develop reasonable policies for State Forests that are not in conflict with 3 **Del.C.** Ch. 10 and these regulations. These policies must be approved by the Secretary and posted in a conspicuous location in the State Forest prior to their becoming effective. Copies of all policies shall also be maintained in the State Forest office.

5.2 Violation of any State Forest policy shall be grounds for eviction from the State Forest and the denial, revocation, or suspension of any permit issued or privilege granted by the Department.

5.3 The Department shall have the authority to enforce safety rules and/or policies developed in accordance with 5.1 of these Regulations for the protection of visitors and property.

5.4 State Forests are open to lawful non-motorized recreational uses that do not violate any of the rules and regulations contained herein.

5.5 Unless otherwise indicated, State Forest access roads are closed to vehicular travel. It shall be unlawful for any person to drive or operate a motorized vehicle upon any lands of the DFS except on established roads or as otherwise authorized by the Forest Administrator. Where vehicular traffic is permitted, the speed limit is twenty (20) miles per hour unless otherwise posted. Vehicular traffic on tax ditch rights of way is prohibited except for maintenance by authorized personnel and for law enforcement purposes. Non-pedestrian traffic (horseback riding and mountain biking) is restricted to access roads and trails unless otherwise noted. None

registered vehicles and all-terrain vehicles are prohibited in all areas except those used by DFS employees or law enforcement in the application of their lawful duties. It shall be unlawful for any person to drive or operate any motorized vehicle upon any lands administered by the DFS, unless said vehicle is licensed for use upon public highways and roadways or the driver or operator of said vehicle has been issued a permit from the DFS.

- 5.6 Boundaries of State Forests are clearly marked with metal signs and yellow paint. Visitors crossing onto private property are subject to trespass laws governed by **Delaware Code**.
- 5.7 No living trees, shrubs, or other vegetation may be cut, felled, uprooted, removed, or otherwise injured or destroyed, unless written permission has first been obtained from the forest officer in charge.
- 5.8 No living animals shall be harassed, injured, destroyed, or collected and removed from State Forest lands unless written permission has first been obtained from the forest officer in charge. The only exception is lawful hunting as specified in the Division of Fish and Wildlife adopted regulations outlined in the annual **Hunting and Trapping Guide**.
- 5.9 Fires are prohibited for any purpose on State Forest lands other than in designated areas unless written permission is obtained in advance from the forest officer in charge. All fires must be under the direct supervision of a competent adult. It shall be unlawful to leave any fires that have not been thoroughly extinguished.
- 5.10 The dumping or depositing of rubbish, trash, paint, household items, or other debris, or any other materials and activities that could result in the depositing of such materials, such as paintball and geo-caching, are also prohibited.
- 5.11 The placement of advertisement signs on State Forest property is prohibited.
- 5.12 It shall be unlawful to litter on State Forest lands.
- 5.13 Writing upon, mutilating, carving, and otherwise defacing trees, buildings, structures, signs, and official notices is prohibited.
- 5.14 With the exception of animals permitted under lawful hunting regulations, all animals must be under the continuous control of the owner(s) unless otherwise authorized in writing by the Forestry Administrator. All dogs must be leashed, unless covered by the exception above. State Forest visitors are responsible for the conduct and any damages, either personal or property, caused by their animals.
- 5.15 It shall be unlawful to train dogs on DFS property unless prior permission is authorized by the State Forest office.
- 5.16 Entry to State Forest lands is prohibited from sunset to sunrise, except for lawful hunting, permitted camping, permitted Redden Lodge use, or as otherwise permitted in writing by the DFS.
- 5.17 Fishing on State Forest lands is limited to catch and release only. A state fishing license is required to fish on State Forest lands.
- 5.18 Visitors shall park in designated areas only and within those designated areas. It shall be unlawful for any person to park any vehicle on lands administered by the DFS in such a manner as to obstruct the use of State Forest access roads, gates, or trails. Any vehicle parked in such a manner shall be subject to removal and the owner of said vehicle shall pay for all costs involved in such removal.
- 5.19 Alcoholic beverages are prohibited on State Forest lands except within the Redden Lodge, if and only if, authorized in writing by the DFS.

6 DE Reg. 517 (10/01/02)

6 DE Reg. 1201 (03/01/03)

10 DE Reg. 88 (07/01/06)

11 DE Reg. 307 (09/01/07)

6.0 Redden State Forest Lodge

It shall be unlawful to make use of the Lodge facility in any manner other than outlined in the Redden state Forest Lodge Lease Agreement.

6 DE Reg. 517 (10/01/02)

6 DE Reg. 1201 (03/01/03)

10 DE Reg. 88 (07/01/06)

11 DE Reg. 307 (09/01/07)

7.0 Camping Rules and Regulations

- 7.1 Camping is free-of-charge, year round, but restricted to map-designated campsites. A forest use permit is required for all camping on State Forest lands. Permits are available at State Forest offices during state

business hours or from information boxes located at each State Forest office. Completed permits must be submitted during office hours to ensure campsite availability.

- 7.2 Campsites are on a first-come, first-served basis and reservations are required.
- 7.3 Campsites are of a primitive type, and are to be used ONLY for tent, van or pickup campers. Travel trailers and /or self-propelled motor homes are excluded due to access and parking limitations, unless otherwise noted.
- 7.4 There are a limited number of campsites, each is large enough to accommodate large families. These are equipped with tables, fire pits, charcoal grills and a trash barrel. Campsites are limited to a maximum number of ten (10) people per site, with a maximum stay of three nights per week. Camper(s) must remove their trash upon vacating their campsite.
- 7.5 Camping is at your own risk. State Forests are a public use area and there is no after-hours, nighttime or weekend security. Law enforcement is provided by the Delaware State Police and DNREC should the need arise.
- 7.6 State forests are “multiple-use facilities”, which means other activities will continue while you camp. These activities include: hunting, picnicking, hiking, nature study, horseback riding, firewood cutting (by permit only), and timber harvesting. The DFS reserves the right to limit or deny permits during times of conflicting use.
- 7.7 Firewood for camp use is available at the campsites. If more firewood is needed, it may be gathered locally from dead and downed trees. Standing trees or shrubs shall not be cut. Using firewood located at the office complex is prohibited. Campfires shall be contained within established fire rings only.
- 7.8 Campsites are to be left clean and all fires are to be extinguished before departing from the area.

6 DE Reg. 517 (10/01/02)

6 DE Reg. 1201 (03/01/03)

10 DE Reg. 88 (07/01/06)

11 DE Reg. 307 (09/01/07)

8.0 Hunting Rules and Regulations

- 8.1 State Forests are year-round multiple use areas. Hunters share the use of State Forest lands with other public users such as hikers, campers, horseback riders, firewood cutters, and loggers.
- 8.2 No special permits are required to hunt on State Forest lands, except as specified in the DNREC, Division of Fish and Wildlife **Hunting and Trapping Guide**. Properly licensed hunters may hunt during any open season except on areas otherwise designated, such as those marked with Wildlife Sanctuary, NO HUNTING, or Safety Zone signs.
- 8.3 No permanent deer stands, platforms, ladders, or blinds may be constructed. No screw-in tree steps, spikes, screws, or nails are allowed.
- 8.4 Deer drives by any person or persons are not permitted on any State Forest land at any time.
- 8.5 Small game hunting is closed on State Forest lands during firearm deer seasons.
- 8.6 The DFS reserves the right to close specific State Forest tracts to hunting during specific hunting seasons. It shall be unlawful for any person to hunt on lands administered by the DFS, except as permitted by the Forestry Administrator in writing and specified on current State Forest area maps distributed by the DFS.
- 8.7 Trapping rights may be leased for State Forest lands. No other trapping is permitted on State Forest lands.
- 8.8 Target shooting is prohibited. Firearms are allowed for legal hunting ~~only~~ and are otherwise prohibited within designated safe areas on State Forest lands, except as set forth below.
 - 8.8.1 Designated areas shall include State Forest Offices, education centers, and lodges, and shall be identified by appropriate signage.
 - 8.8.2 Active duty and qualified retired law enforcement officers may possess firearms within areas administered by the Department, including designated areas, provided that proper and current credentials shall be produced upon request.
 - 8.8.3 Delaware residents holding an active current permit to carry a concealed deadly weapon may carry a firearm within areas administered by the Department, including designated areas, provided that the permit shall be produced upon request. Residents of other states holding an equivalent permit or license to carry a concealed firearm may be permitted to carry a concealed firearm at the discretion of the Department.
 - 8.8.4 Firearms may be carried within areas administered by the Department, outside of designated areas, by any person not prohibited by 11 Del.C. §1448.
 - 8.8.5 Law enforcement officers may limit the discharge of firearms and the use of other weapons within areas administered by the Department, in order to protect public safety and preserve the peace.
 - 8.8.6 Any person possessing a firearm shall display identification upon request, sufficient to enable a law enforcement officer to undertake a background check.

- 8.9 Waterfowl hunting is not permitted on State Forest land or waters.
- 8.10 Squirrel hunting is not allowed with a rifle or muzzleloading rifle. Squirrel hunting with a shotgun is permitted.
- 8.11 The following hunting restrictions apply to those tracts of State Forest lands as specified in the DNREC, Division of Fish and Wildlife **Hunting and Trapping Guide**. Maps delineating these areas are available at State Forest offices.
 - 8.11.1 All deer hunting is limited to numbered stands.
 - 8.11.2 For shotgun season stands will be chosen in a pre-season lottery. To apply for a stand during the shotgun season fill out the application in the Delaware Hunting and Trapping Guide. For leftover stands there will be a daily lottery held at the local State Forest office, 1 and 1/2 hours before legal hunting time.
 - 8.11.3 For Muzzleloader season there will be a daily lottery held at the local State Forest office, 1 and 1/2 hours before legal hunting time.
 - 8.11.4 All hunters on these tracts, during shotgun and muzzleloader season, must only hunt from their designated stand, as walk around hunting is not permitted.
 - 8.11.5 During Archery season bowhunters must be within 50 yards of their designated stand.
 - 8.11.6 Stands will be available during Archery season on a first-come, first-served basis.
 - 8.11.7 No more than one hunter may hunt from a stand at any one time.

6 DE Reg. 1201 (03/01/03)

10 DE Reg. 88 (07/01/06)

11 DE Reg. 307 (09/01/07)

9.0 Forest Use Permits

- 9.1 Forest use permits on State Forests are issued on a first-come, first-served basis and are required for camping, firewood cutting, lodge rental (Redden State Forest), organized special events, and pavilion reservation. Facility users are required to submit a completed Forest Use Permit during state business hours. Facilities are to be reserved in advance.
- 9.2 Firewood permits are required to harvest firewood on State Forest lands and are issued at the discretion of the State Forest staff. When available, these permits are issued on a first-come, first-served basis. There is a fee of \$100 for firewood permits, which allows the holder to cut for three days within areas designated and posted by State Forest staff. No trees are to be felled; only downed wood may be cut. Wood is not for resale.

6 DE Reg. 1201 (03/01/03)

10 DE Reg. 88 (07/01/06)

11 DE Reg. 307 (09/01/07)

10.0 Department Enforcement Regulations

- 10.1 The violation of, or the refusal to obey, any law, these regulations, State Forest policies or the terms or conditions of any permit issued or privilege granted by the Department shall be grounds for the suspension or revocation of any permit issued or privilege granted by the Department, the removal or eviction from State Forest lands and/or the denial of future entry to, or the denial of future permits or privileges within State Forests. Any and all applicable permit fees shall be forfeited to, and retained by, the Department. Any such suspension, revocation, removal, eviction or the denial of entry, permit or privilege shall not preclude the prosecution of any person for violation of any law or these regulations.
- 10.2 Whoever violates any of the foregoing regulations shall be deemed to have committed an unclassified misdemeanor and shall be fined not less than \$25 nor more than \$250 and be required to pay all applicable court costs. For each subsequent violation, within three years of a previous conviction, the violator shall be fined not less than \$50 nor more than \$500 and be required to pay all applicable court costs. In addition to fines and court costs, State Forest Service may request the court to order restitution in an amount determined by it for the destruction or removal of property to those convicted of violating these regulations.
- 10.3 Justices of the Peace throughout the State shall have jurisdiction over alleged violations of these State Forest Regulations; however, any violator shall, upon arrest, be taken to the nearest available Justice of the Peace in the county where such violation is alleged to have occurred, or in lieu thereof, be provided with an assessment form for the voluntary payment of fines.
- 10.4 Notwithstanding the immediate preceding subsection, a duly authorized peace officer making an arrest for a violation of these regulations may issue a summons requiring the violator to appear in person at a subsequent date at the Justice of the Peace Court nearest to the place of arrest and during the regularly scheduled hours of the Court.

6 DE Reg. 517 (10/01/02)

6 DE Reg. 1201 (03/01/03)
10 DE Reg. 88 (07/01/06)
11 DE Reg. 307 (09/01/07)
21 DE Reg. 875 (05/01/18) (Final)